

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 18, 2008

STATE OF TENNESSEE v. CHRISTOPHER SCOTT WALKER

Appeal from the Circuit Court for Blount County
No. C-16460, C-16461 Michael H. Meares, Judge

No. E2008-00643-CCA-R3-CD - Filed January 12, 2009

The defendant, Christopher Scott Walker, pleaded guilty to two charges of theft of property valued at \$1,000 or more in exchange for a three-year sentence to be served as 120 days' incarceration followed by supervised probation. The defendant's supervising probation officer reported several probation violations and, after a probation revocation hearing, the trial court ordered the defendant to fully serve the balance of his sentence. The defendant concedes that he violated the terms of probation but argues that the trial court erred by ordering him to serve the balance of the sentence in the Department of Correction. Discerning no error, we affirm the judgment of the trial court.

Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which THOMAS T. WOODALL and ROBERT W. WEDEMEYER, JJ., joined.

Mack Garner, Maryville, Tennessee (at trial); and J. Liddell Kirk, Knoxville, Tennessee (on appeal) for the appellant, Christopher Scott Walker.

Robert E. Cooper, Jr., Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; Michael L. Flynn, District Attorney General; and Robert Headrick, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On February 16, 2007, the defendant agreed to waive his right to grand jury review and pleaded guilty by information to two counts of theft of property valued at \$1,000 or more. *See* T.C.A. §§ 39-14-103, -105(3) (2001). Pursuant to a plea agreement, the defendant received an agreed sentence of three years to be served as 120 days' incarceration followed by supervised probation. On December 7, 2007, a probation violation warrant issued alleging that the defendant had failed to report to his probation officer, had failed to pay his court costs, and had failed to pay his probation fees. The probation violation warrant was subsequently amended on January 28, 2008, to allege that the defendant was arrested in Knox County, Tennessee, on both October 24 and 28, 2007, for theft of property valued at \$500 or less.

In the March 17, 2008 revocation hearing, probation officer Roger Montgomery testified that he had been assigned to supervise the defendant on a previous probation sentence and that the defendant successfully completed that probation sentence “with [his] urging.” Mr. Montgomery was subsequently assigned to supervise the defendant’s probation in the present case. He testified that, for the first six months of the sentence, the defendant reported “fairly well.” He stated that on September 26, 2007, he performed a “home visit” at the defendant’s residence, but, because the defendant was not home, he left a card so that the defendant could contact him. The defendant called him back a day or two after the visit to inform him that he had seen Mr. Montgomery’s card. This was the last time Mr. Montgomery had contact with the defendant. He tried to contact him several times before signing the probation violation warrant on December 7, 2007. He testified that, in addition to not reporting, the defendant had failed to pay court costs and probation fees. Mr. Montgomery testified that he “received an arrest report from Knox County that [the defendant] had been arrested,” so he amended the warrant to include the two charges of theft on January 28, 2008. He testified that the defendant did not report the new charges to him, and he discovered these charges when the defendant “was actually picked up for failure to appear on those charges.”

Mr. Montgomery testified, “I don’t have a lot of faith in [the defendant] being able to complete probation,” although he had supervised the defendant for a “substantial” amount of time.

On cross-examination, Mr. Montgomery admitted that, for the first six months of the defendant’s probation, he had maintained employment and had not violated any substance-abuse policies. He testified that the defendant did not appear to have any mental or substance-abuse problems. He said, “All the tools were in place for [the defendant] to succeed. And why he did not, I do not know.”

The defendant testified that he had worked as an electrician and agreed that he made “pretty good money.” He testified that he had no mental or substance-abuse problems and that he could pass a drug screen. He admitted that he missed an appointment with Mr. Montgomery. He said, “[A]fter realizing I missed, I guess I just . . . threw my hands up, I guess, thought I messed up and didn’t go back.” He testified that, during the period that he did not report to Mr. Montgomery, he had resided at the same residence and held steady employment with his family’s business. The defendant claimed that he had “been paying back [his] debt to the court and to [the victim] . . . and paying [his] restitution, fines and all on time.” He said, “I just got sidetracked that one time, and that’s thrown everything off.” He testified, “If given another chance, I will work as hard as I can to make it work out.” During cross-examination, he agreed with the State that he had an “extensive” criminal history.

At the conclusion of the hearing, the trial court revoked the defendant’s probation on the grounds that the defendant “materially” violated the rules of his probation in “failing to report as required since September of 2007, in . . . failing to pay any on [his] probation fees and the restitution and costs . . . since September of ’07, and in [his] failure to report to [his] probation officer the new charges . . . in Knox County from October of 2007.”

A trial court may revoke a sentence of probation upon a finding by a preponderance of the evidence that the defendant has violated the conditions of his release. T.C.A. § 40-35-311(e) (2006); *Stamps v. State*, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). A revocation will be upheld absent a showing that the trial court abused its discretion. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). In order to establish that the trial court has abused its discretion, the defendant must show that there is no substantial evidence to support the determination that he violated his probation. *Id.* (citing *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978); *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980)). Relief will be granted only when “the trial court’s logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved.” *State v. Shaffer*, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting *State v. Moore*, 6 S.W.3d 235, 242 (Tenn. 1999)). Upon finding a violation, the trial court may “revoke the probation and suspension of sentence and cause the defendant to commence the execution of the judgment as originally entered.” T.C.A. § 40-35-311(e). Furthermore, when probation is revoked, “the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of such suspension.” *Id.* § 40-35-310. The trial judge retains the discretionary authority to order the defendant to serve the original sentence. *See State v. Duke*, 902 S.W.2d 424, 427 (Tenn. Crim. App. 1995).

Here, the record establishes that the defendant failed to report as ordered and failed to pay probation fees and court costs. The defendant was arrested while on probation, and he failed to report this to his probation officer or the district attorney’s office. The defendant admitted that he had failed to report and that he essentially “threw [his] hands up” on completing probation. Despite the defendant’s argument that he has no mental or substance abuse problems and that he maintains steady employment, the duty is upon the defendant to comply with the rules of his probation. This defendant admits that he failed to do so. The trial court did not abuse its discretion by revoking the defendant’s probation and ordering incarceration.

Accordingly, the judgment of the trial court is affirmed.

JAMES CURWOOD WITT, JR., JUDGE